



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Ms. Brenda Loudermilk
Special Counsel
Texas Railroad Commission
P.O. Box 12967
Austin, Texas 78711-2967

OR96-0408

Dear Ms. Loudermilk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33462.

The Texas Railroad Commission (the "Commission") received an open records request for "any analysis prepared by the staff of [the Commission] regarding" four legislative bills that were under consideration by the 74th Texas Legislature. You have submitted internal memoranda to this office for review as being representative of the types of Commission records that are responsive to the open records request. You contend that these memoranda may be withheld from the public pursuant to sections 552.106, 552.107(1), and 552.111 of the Government Code.

Each of the exceptions that you raise are intended to protect "advice, opinion, and recommendation" in various contexts. Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation." Open Records Decision No. 367 (1983). Section 107(1) protects an attorney's legal advice and opinion rendered to his client. Open Records Decision No. 574 (1990). Section 552.111 excepts from required public disclosure advice, opinion, or recommendation intended for use in a public agency's policy-making process. Open Records Decision No. 615 (1993). Generally, however, none of these exceptions protect purely factual material. See Open Records Decision Nos. 367 (1983)(section 552.106); 462 (1987)(attorney-client privilege); 615 (1993)(section 552.111).

The records that you submitted to this office contain two types of information: 1) a general description of each piece of legislation, and 2) an analysis of each respective bill and its possible effect or impact on the Commission's regulatory functions. As previously noted, we not believe that the mere recitation of the contents of proposed legislation constitutes "advice, opinion, or recommendation" for the purposes of any of the exclusions that you have raised; that is, they represent only factual material. Consequently, the Commission must release those portions of the requested documents.

The analyses of the bills and their effect or impact on the Commission do, nevertheless, constitute "advice opinion or recommendation." Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In this instance, we conclude that the portion of the documents concerning an analysis of each respective bill and its possible effect or impact on the Commission's regulatory functions reflects the policymaking processes of the Commission. Accordingly, the Commission may withhold those portions of the requested records pursuant to section 552.111.¹ We have marked those portions of the submitted documents as indicative of the types of information that the Commission may withhold, but all factual descriptions of the bills must be disclosed.²

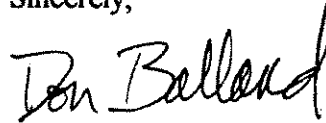
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² We note that section 552.111 is a discretionary exception and may be waived by the governmental body. Gov't Code § 552.007; see also Open Records Decision Nos. 464 (1987); 435 (1986).

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 33462

Enclosures: Marked documents

cc: Ms. Mary E. Kelly
Executive Director
Texas Center for Policy Studies
P.O. Box 2618
Austin, Texas 78768
(w/o enclosures)